NOTES OF CASES.

JUDICIAL ENGLISH.—"It seems that the witness, some time previous to this, had *suspicioned* that appellant was having illicit intercourse with the prosecutrix, and about November *tackled* him on the subject, and finally defendant *owned up* to him that he had been having carnal intercourse with the prosecutrix." Henderson, J., in *Anderson* v. *State* (Tex.), 45 S. W. 14.

LIFE INSURANCE—SUICIDE.—The Supreme Court of Iowa, in *Seiler* v. *Economic Life Ass'n* (76 N. W. 941), has handed down a decision, to the effect that where there is no clause prohibiting suicide in a life policy, which is payable to others than the assured, suicide by the assured, though sane, will not prevent a recovery. We called attention in a recent number (3 Va. Law Reg. 830) to a similar decision by the Supreme Court of Pennsylvania—both cases citing and distinguishing the recent case of *Ritter* v. *Mutual Life Ins. Co.* in the United States Supreme Court, where the policy was payable to the assured's personal representative.

BIGAMY — COMPETENCY OF SECOND WIFE TO TESTIFY.—It is held in *Lowery* v. *People* (Ill.), 50 N. E. 165, that in a prosecution for bigamy, the second wife, whose marriage to the accused is proved or admitted, is not competent to testify to the first marriage, if the fact of such marriage is controverted, or until it is clearly otherwise established. The reason is that proof of her own marriage makes her *prima facie* the lawful wife, until the first marriage be proved; and until this fact is established, she occupies the position of lawful wife, which, according to common law principles, renders her incompetent. *Miles* v. *U. S.*, 103 U. S. 304; 3 Greenleaf's Ev. 206.

NEGOTIABLE INSTRUMENTS — ATTORNEYS' FEES.— In the case of *Roads* v. *Webb*, 40 Atl. 129, the Supreme Court of Maine maintains the negative side of the much-disputed question as to the negotiability of a promissory note containing a stipulation for attorney's fees in case of default in payment.

The question is now set at rest in Virginia (or will be after July 1) by the Negotiable Instruments Law, which provides (sec. 2) that "the sum payable is a sum certain within the meaning of this act, although it is to be paid . . . with cost of collection or an attorney's fee, in case payment shall not be made at maturity." (Sub-sec. 5.)

PARENT AND CHILD—NEXT FRIEND—RES JUDICATA.—In *Bernard* v. *Merrill* (Me.), 40 Atl. 136, it is held that a father who, as next friend, represents his infant child in a suit to recover damages for personal injuries to the latter, is not a party to such proceeding in the sense that a judgment for the defendant is a plea in bar of a subsequent suit by the father to recover for loss of service and other damages, suffered by the father himself by reason of such injury to the child. The opinion contains a very good discussion of the question as to how far a judgment against a person who is a party in one capacity, is binding upon him in

another capacity. The court quotes with approval the statement by Quain, J., in *Leggott* v. *Railway Co.*, 1 Q. B. Div. 606: "It must be observed that a verdict against a man suing in one capacity will not estop him when he sues in another distinct capacity, and, in fact, is a different person in law." Citing also *Stoops* v. *Woods*, 45 Cal. 439; *Bigelow* v. *Winsor*, 1 Gray 299; *Bartlett* v. *Gaslight Co.*, 122 Mass. 209; *Lord* v. *Wilcox*, 99 Ind. 491; *Rathbone* v. *Hooney*, 58 N. Y. 463.

SEDUCTION UNDER PROMISE OF MARRIAGE — DEFENDANT'S CONTINUED READINESS TO FULFILL HIS PROMISE.—In *People* v. *Hough* (Cal.), 52 Pac. 846, it is held, contrary to the opinion sometimes judicially expressed, that the offense of seduction under promise of marriage is committed as soon as the seduction occurs, pending the marriage engagement, even though the accused in good faith intends to fulfill his promise, and is at all times thereafter ready and willing to perform it. And, therefore, that it is no defense to the prosecution, that the fulfillment of the marriage contract was prevented solely by the refusal of the female to enter into the marriage relation, although, under the statute, the actual marriage of the parties would be a plea in bar to the indictment.

On this point the court well says:

"When a man induces an unmarried female of previous chaste character to submit her person to him by reason of a promise of marriage upon his part, the seduction has taken place — the crime has been committeed. The succeeding section, which provides that the marriage is a bar to a prosecution, clearly recognizes that the crime has been committed when the promise has been made and the intercourse thereunder has taken place. There may be incidental references in some cases indicating that a refusal upon the part of the man to carry out the promise is a necessary element of the offense. *People* v. *Samonset*, 97 Cal. 448, 32 Pac. 520; *State* v. *Adams*, 25 Or. 172, 35 Pac. 36, 42 Am. St. Rep. 790. But such is not the fact. The statute which provides that marriage of the parties shall be a bar to a prosecution is a most wise and just provision. Yet the woman is not compelled to condone the offense by marrying the man, and thus freeing him from the penalties of the law. Upon the seduction her affection for him may change to hatred, or thereafter her belief as to his good character may be displaced by knowledge that he is a felon. Indeed, whether or not the reasons which actuate her in refusing to marry him are good or bad is of no moment. She is the sole arbiter upon that question, and the man takes those chances when he obtains his pleasures under the circumstances here presented. It does not lie in his power to escape the penalties of the law by reason of his willingness to carry out his marriage promise. The woman has the power and the right to decline the marriage, and, when she has so declined, the road to his successful prosecution is free and unobstructed."

See 3 Va. Law Reg. 672.

A CONTRACT between cosureties fixing the proportion and extent of their several or correlative liability as between themselves is held, in *Rose* v. *Wollenberg* (Or.), 39 L. R. A. 378, to be outside the statute of frauds. With this case is a note presenting the other authorities on the effect of the statute of frauds upon such contracts between cosureties.